

DOCKET NO.: HENK-0061 (H 3380)  
Application No.: 09/701,098  
Office Action Dated: July 28, 2004

PATENT  
REPLY FILED UNDER EXPEDITED

PROCEDURE PURSUANT TO  
37 CFR § 1.116

### REMARKS

Claims 9-19, 25-33, and 36-39 are currently pending. The independent claims are 9, 25, 36, and 37. No claims are amended herein, and Applicant respectfully requests reconsideration and withdrawal of the rejections.

#### Anticipation Rejection Should Be Withdrawn

Applicant submits that the anticipation rejection of claims 9-15, 18, 25, and 27-32 over the Streit reference (US Pat. No. 4,178,264) should be withdrawn, as the Streit reference fails to meet all limitations of the claimed invention.

In order for the cited reference to anticipate Applicant's claims, all elements in the claims must be present in the reference. The independent claims 9 and 25 recite "wherein the composition contains **virtually no** water-soluble solvent."

In contrast, the Streit reference requires 1.0-20.0 % solvent in their compositions. The Office Action has inexplicably strung together a chain of near-synonyms, on page 6, which warps the limitation of "virtually no" to "almost no" and on to "a small amount." Applicant is uncertain as to how this could be permissible, as arbitrarily reading in "a small amount" fails to give the common everyday meaning to "virtually no."

Moreover, the application itself makes it clear that "virtually no" is something less than a "small amount" in describing the preferred embodiment. The application states: "In a preferred embodiment, the composition is formulated with virtually no solvent. **However, small amounts** may be introduced, for example, through additives (for example perfume oils)." (Emphasis added).

Contrary to "virtually no" solvent, the Streit reference provides for an air freshener having 1.0-20.0 % solvent. *See* column 2, lines 29-34. Even considering the smallest contemplated amounts in the Streit reference, the Applicant still submits that 1% by weight of solvent is significantly more than "virtually no" solvent.

Accordingly, the Streit reference fails to meet the limitation; therefore, the rejection is improper and should be withdrawn.

### Obviousness Not Established

Claims 16-17, 19, 26, 33, and 36-39 stand rejected over the Streit reference in view of Neumiller (US Pat No. 4,294,821), Kellett et al. (US Pat. No. 5,034,222), Hautmann (US Pat. No. 4,117,110), Farmer (US Pat. No. 6,123,906), or Martin et al. (US Pat. No. 5,788,155). The combinations do not establish a *prima facie* case of obviousness and are improper.

Looking at the cited references in total, the Applicant submits that there is no permissible motivation to combine the references. For example, the Streit reference has a relatively high water content, stating "The gels of the present invention are aqueous gels and water comprises from 55 to 95% and preferably from 80 to 90% of the total composition." In contrast, the secondary references discussed below are by design limited in the amount of water present. Thus, apart from the teachings of the Applicant's specification, one would not be lead to combine the references.

The rejection of independent claim 36 is based on a combination of the Streit reference and the Neumiller reference, but there is no suggestion to combine the references. The Neumiller reference composition states that while it "can include a small amount of moisture, i.e., up to 1000 parts per million, the compositions of the **present invention function best when the composition is, at least initially, substantially anhydrous . . .**" Column 4, lines 56-60 (Emphasis added). This teaches away from a combination with an aqueous gel of Streit.

With respect to independent claim 37, the obviousness rejection is based on a combination of the Streit reference and the Kellett reference. The Kellett reference discloses an air freshening composition that only contains a limited amount of water – less than 20-40% in granular foam phase, as aqueous reactant is mixed with a prepolymer resin (col. 12, ln. 24-28) and **no more than 25% in the gelled phase** (col. 13, ln. 65-68). This teaches away from a combination with an aqueous gel of Streit.

With respect to dependent claim 19 and 33, the claims are rejected over the Streit reference in view of the Hautmann reference. The Hautmann reference requires water content to "**not surpass 20%.**" Column 6, lines 53-55. There is no motivation to combine Hautmann because it **teaches away** from the combination with the mostly water composition of Streit.

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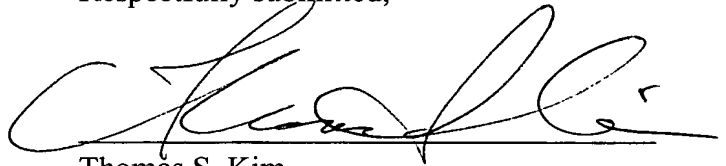
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The Examiner is invited to contact the undersigned at the telephone number indicated below in order to discuss any remaining concerns and to expedite allowance of the application.

Respectfully submitted,

Date: \_\_\_\_\_

10/1/04



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